

No. 05-449 AUG 20 2005

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In The
Supreme Court of the United States

BRUCE CHAMBERS,

Petitioner,

versus

JERRY CAMPBELL,

Respondent.

**On Petition For Writ Of Certiorari
To The Mississippi Supreme Court**

PETITION FOR WRIT OF CERTIORARI

BRUCE CHAMBERS pro se
5690 Hwy. 61 South
Vicksburg, MS 39180
Telephone 601-638-5783
Fax 601-638-8596

QUESTIONS PRESENTED

1. Did the circuit court of the Ninth Judicial District of Mississippi deny due process to the petitioners?
2. Did the Supreme Court of Mississippi deny due process to the petitioners?

LIST OF PARTIES

The parties to the proceedings are:

**BRUCE CHAMBERS
PEGGY CHAMBERS
JERRY CAMPBELL
KENNETH RECTOR**

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PETITION FOR WRIT OF CERTIORARI

Petitioner Bruce Chambers requests that a writ of certiorari issue to review the judgment of the Supreme Court of Mississippi.

OPINIONS BELOW

The decision of the Supreme Court of Mississippi is unpublished but is reproduced in Appendix at App. 1.

JURISDICTION

The opinion of the Supreme Court of Mississippi was entered on January 18, 2005, rehearing denied on April 12, 2005. The Supreme Court of Mississippi denied the petition for a writ of certiorari on June 23, 2005. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

PROVISIONS OF LAW

U.S. CONSTITUTION FOURTEENTH AMENDMENT

No state shall deprive any person of life liberty or property without due process of law, nor deny to any person within its jurisdiction, the equal protection of the laws.

Mississippi Constitution Article 6 Section 177A as amended. No presiding judge shall conduct an ex-parte communication with the plaintiff.

STATEMENT OF CASE

This is a legal malpractice case sounded in contract, which was filed on October 4, 2002 in the Ninth Judicial District of Mississippi. The Hon. Richard Smith of the Fourth Judicial District of Mississippi was appointed to hear this case.

A motion for summary judgment was filed by Campbell; the hearing was held on March 8, 2004 by telephone from the Hon. Richard Smith's chambers in the Sunflower Courthouse being in the Fourth Judicial District of Mississippi. This petitioner Chambers was present at this hearing.

This hearing by telephone supposedly by Rule 56 of the Mississippi rule of civil procedure was a farce as it was only two ex-parte conversations by the judge between attorney Rector for Campbell and the attorney Kevin Muhammad for Chambers.

After the Hon. Richard Smith concluded his phone communications with the attorneys, he informed this petitioner Chambers that he would be issuing an order for Chambers to obtain a legal expert to conduct a but-for test, this statement to Chambers constituted an ex-parte communication between the plaintiff and the presiding judge, which is prohibited by the Mississippi Constitution Article 6 Section 177A as amended.

No transcript could be obtained by Chambers of this hearing to be used in the appeal to the Mississippi Supreme Court due to the fact that no record was made. This failure to make a record in a court of record ignored Rule 5.02 of the Mississippi Rules of Civil Procedure.

REASON FOR GRANTING THE WRIT

Abuse of discretion is the failure to exercise sound, reasonable, & legal decision making. This clearly was the case on March 8, 2004 when the telephonic hearing on the motion to dismiss by summary judgment took place.

No discovery had been made by either party, a trial date had been set, a pretrial conference had been conducted, an agreed order had been signed by each attorney.

Upon receiving the notice of a hearing for summary judgment, Muhammad, then attorney for Chambers, filed a motion to continue due to serious medical problems, but this motion was ignored by the Hon. Richard Smith, and he proceeded with the hearing by telephone.

No affidavits by either party were offered, the lower court order granting summary judgment was not accompanied by findings of fact or conclusions of law, but merely stated that Campbell was entitled to summary judgment as a matter of law, which was never offered. (*Benton Volvo-Metairie, Inc. v. Volvo Southwest*, 479 F.2d 135 (5th Cir. 1973)).

Summary judgment procedure is not intended to cut litigants off from trial by jury. (*Hitiker v. Coleman*, 115 F.2d 305 (5th Cir. 1940)). All of the evidence to support the charge of legal malpractice for breach of contract by attorney Campbell is contained in the file of the case that he handled for Chambers and would have been presented as evidence at trial. Campbell made no discovery due to the fact that he had in his possession the very same file.

The party opposing the motion should have been given all reasonable doubt (*Heyward v. Public Housing Administration*, 238 F.2d 689 (5th Cir. 1956)).

Rule 56 does not permit trial by affidavit although affidavits may be used on a motion for summary judgment, but the court may not resolve disputed fact issues by references to these affidavits. 3 Barton and Holtzoff (Wright ed.) 8-1234 n.56.

(*Dawkins v. Green*, 412 F.2d 644 (5th Cir. 1969); *Doff v. Brunswick Corp.*, 372 F.2d 801 (9th Cir. 1967)).

CONCLUSION

The abuse of discretion by the Ninth Judicial Court of Mississippi offended the Fourteenth Amendment to the United States Constitution by denying due process to the courts of law unto Bruce Chambers and Peggy Chambers, and further violated the rights of the Chambers when the presiding Judge Hon. Richard Smith violated the Mississippi Constitution stating to Chambers directly that he would be issuing an order for Chambers to retain a legal expert to conduct a but-for test without his attorney present.

To guarantee the rights provided by the Constitution of the United States and the Mississippi Constitution, this case should be returned to the courts of Mississippi for further proceedings according to law.

Respectfully submitted,

BRUCE CHAMBERS Pro Se
5690 Hwy. 61 South
Vicksburg, MS 39180
phone 601-638-5783
fax 601-638-8596

App. 1

Mississippi Reports

**CHAMBERS v. CAMPBELL,
2004-CP-00718-COA (Miss. 1-18-2005)**

**BRUCE CHAMBERS AND PEGGY CHAMBERS,
APPELLANTS**

v.

**JERRY CAMPBELL,
APPELLEE**

No. 2004-CP-00718-COA.

Court of Appeals of Mississippi.

January 18, 2005.

Petition for Rehearing Filed February 1, 2005.

Petition for Writ of Certiorari filed April 21, 2005.

**COURT FROM WHICH APPEALED: WARREN
COUNTY CIRCUIT COURT, TRIAL JUDGE: HON.
RICHARD A. SMITH, DATE OF TRIAL COURT JUDG-
MENT: 3/31/2004**

DISPOSITION: AFFIRMED

**ATTORNEYS FOR APPELLANTS: PEGGY CHAM-
BERS (PRO SE), BRUCE CHAMBERS (PRO SE)**

**ATTORNEY FOR APPELLEE: KENNETH B. REC-
TOR**

BEFORE BRIDGES, P.J., GRIFFIS AND ISHEE, JJ.

GRIFFIS, J., FOR THE COURT:

**¶ 1. Bruce and Peggy Chambers appeal the circuit
court's judgment granting Jerry Campbell's motion for
summary judgment. We find no error and affirm.**

FACTS

¶ 2. The Chambers owned several tracts of real property that were subject to a deed of trust in favor of BancorpSouth Bank. The Chambers failed to pay the indebtedness owed, and the Bank foreclosed on the deed of trust. At the foreclosure sale, Evelyn McDonald and David McDonald, doing business as McDonald Developers, purchased the property.

¶ 3. The Chambers retained Jerry Campbell, an attorney, to file a lawsuit against the Bank to set aside the foreclosure sale. The chancellor decided the case in favor of the Bank, and the Chambers appealed. The chancellor's decision was upheld by this Court. *See Chambers v. BancorpSouth Bank*, 822 So.2d 1113, 1116 (¶ 12) (Miss. Ct. App. 2002).

¶ 4. The matter before us now is a subsequent claim for legal malpractice that the Chambers filed against Campbell. The circuit court granted Campbell's motion for summary judgment. On appeal, the Chambers argue that the circuit court erred in granting the motion for summary judgment.

STANDARD OF REVIEW

¶ 5. This Court employs a de novo standard of review of a lower court's grant of summary judgment and examines all the evidentiary matters before it. *McMillan v. Rodriguez*, 823 So.2d 1173, 1176-77 (¶ 9) (Miss. 2002). The evidence must be viewed in the light most favorable to the party against whom the motion has been made. *Id.* at 1177. If, in this view, there is no genuine issue of material fact, and the moving party is entitled to judgment as a

matter of law, summary judgment should be entered in his or her favor. *Id.*

ANALYSIS

¶ 6. The Chambers claim that Campbell was negligent in handling the lawsuit against the Bank. The three elements of a legal malpractice claim are: (1) existence of an attorney-client relationship; (2) negligence on the part of the attorney in handling his client's affairs entrusted to him; and (3) proximate cause of the injury. *Wilbourn v. Stennett, Wilkinson & Ward*, 687 So.2d 1205, 1215 (Miss. 1996). As to the third element, the plaintiff bears the burden to show that "but for their attorney's negligence, [the plaintiff] would have been successful in the prosecution or defense of the underlying action." *Rogers v. Eaves*, 812 So.2d 208, 211 (¶ 14) (Miss. 2002).

¶ 7. In response to the motion for summary judgment, the Chambers neither alleged nor offered any evidence to establish that their lawsuit against the Bank would have been successful but for Campbell's negligence. Instead, the Chambers merely claim that Campbell was negligent in "failing to answer the counterclaim(s), request for admissions, interrogatories and production of documents filed by the defendants in Bruce Chambers' foreclosure lawsuit, for five years." The Chambers also contend that Campbell's failure "to include an argument section in an appellant's brief" constitutes negligent conduct for which the Chambers seek \$10,000,000 in actual and compensatory damages.

¶ 8. There is, however, no evidence to support the Chambers' allegations that they lost their lawsuit against the Bank because Campbell failed to timely respond to

counterclaims or discovery requests or that the format of the appellate brief prepared by Campbell did not exactly comply with Mississippi Rules of Appellate Procedure. Instead, it is clear from this Court's ruling that the Chambers lost the underlying lawsuit because of their own actions rather than as a result of any negligence by Campbell.

¶ 9. In *Chambers*, this Court held that the foreclosure could not be set aside because the Chambers leased the property from the McDonalds after the foreclosure sale. *Chambers*, 822 So.2d at 1115 (¶ 7). We concluded that a mortgagor who is silent at the time of the foreclosure sale and thereafter leases the property from the mortgagee is estopped from subsequently challenging the validity of the foreclosure. *Id.* We further held that the Chambers could not contest the foreclosure sale without paying the original indebtedness due the Bank. *Id.* at (¶ 8). Thus, we held that since the Chambers had not paid the debt and were not able to do so, they could not in equity seek a cancellation of the foreclosure. *Id.* We also held that the Chambers' claim that the foreclosure sale should be nullified because of a defective substitution of the trustee in the deed of trust was without merit. *Id.* at 1116 (¶ 11). This Court found that "the substitution was both acknowledged and recorded in a proper manner." *Id.*

¶ 10. Based on this Court's opinion, it is clear that the Chambers can prove no set of facts upon which they can recover against Campbell. Therefore, because the Chambers failed to present sufficient evidence to create a genuine issue of fact on the proximate cause element of their legal malpractice claim, we find that the circuit court correctly granted summary judgment and affirm.

¶ 11. The Chambers also allege that Campbell violated Rule 1.7(b) of the Mississippi Rules of Professional Conduct. The Chambers claim that Campbell had an undisclosed conflict between the interest of the Chambers and the interest of the Bank in the underlying case because Campbell's father had previously been an officer of the Bank's predecessor institution. However, there is no evidence that Campbell's father had any involvement in the transaction between the Bank and the Chambers. Campbell's father died two years before the foreclosure sale was held and had retired from the Bank several years prior to his death. The fact that Campbell's father at one time was employed by the opposite party in the underlying suit does not, standing alone, violate the Mississippi Rules of Professional Conduct. Thus, we find that this issue lacks merit.

¶ 12. THE JUDGMENT OF THE WARREN COUNTY CIRCUIT COURT GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANTS.

KING, C.J., BRIDGES AND LEE, P.JJ., IRVING, MYERS, CHANDLER, BARNES AND ISHEE, JJ. CONCUR.

App. 6

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Betty W. Sephton	(Street Address)
Post Office Box 249	450 High Street
Jackson, Mississippi	Jackson, Mississippi
39205-0249	39201-1082
Telephone: (601) 359-3694	e-mail: sctclerk@mssc.state.ms.us
Facsimile: (601) 359-2407	

January 18, 2005

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 18th day of January, 2005.

Court of Appeals Case # 2004-CP-00718-COA
Trial Court Case # 02-0156CI

Bruce Chambers and Peggy Chambers v. Jerry Campbell

The judgment of the Warren County Circuit Court granting defendant's motion for summary judgment is affirmed. All costs of this appeal are assessed to the appellants.

***NOTICE TO CHANCERY/CIRCUIT/
COUNTY COURT CLERKS***

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

App. 7

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Betty W. Sephton	(Street Address)
Post Office Box 249	450 High Street
Jackson, Mississippi	Jackson, Mississippi
39205-0249	39201-1082
Telephone: (601) 359-3694	e-mail: sctclerk@mssc.state.ms.us
Facsimile: (601) 359-2407	

April 12, 2005

This is to advise you that the Mississippi Court of Appeals rendered the following decision on the 12th day of April, 2005.

Court of Appeals Case # 2004-CP-00718-COA
Trial Court Case # 02-0156CI

Bruce Chambers and Peggy Chambers v. Jerry Campbell

Appellants' motion for rehearing is denied.

***NOTICE TO CHANCERY/CIRCUIT/
COUNTY COURT CLERKS***

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

Serial: 124470

IN THE SUPREME COURT OF MISSISSIPPI

No. 2004-CT-00718-SCT

BRUCE CHAMBERS AND PEGGY CHAMBERS

v.

JERRY CAMPBELL

ORDER

(Filed Jun. 23, 2005)

This matter came before the Court on the Petition for a Writ of Certiorari filed by Bruce Chambers and Peggy Chambers, pro se. The Court has considered the petition and finds that it should be denied.

IT IS THEREFORE ORDERED that the Petition for a Writ of Certiorari filed by Bruce Chambers and Peggy Chambers, pro se, is hereby denied.

SO ORDERED, this the 14th day of June, 2005.

/s/ James W. Smith, Jr.
JAMES W. SMITH, JR.,
CHIEF JUSTICE FOR
THE COURT

TO DENY: SMITH, C.J., WALLER AND COBB, P.JJ.,
EASLEY, CARLSON, GRAVES, DICKINSON, AND
RANDOLPH, JJ.

NOT PARTICIPATING: DIAZ, J.

